

EXHIBIT

“A”

AFFIDAVIT OF FACTS: PS17-17

I am Lieutenant Jason Hendershot #148 and I have been a Philadelphia Police Officer for more than twenty-five (25) years. I am the Commanding Officer of the OISI Unit and I have been assigned to the OISI Unit for over four (4) years. During the past four (4) years, I have directed and supervised of over seventy-five (75) OIS incidents.

Prior to being assigned to the OISI Unit, I was assigned to the Internal Affairs Division (IAD) Shooting Team for eighteen (18) months as an OIS investigator and was the primary investigator on twelve (12) OIS incidents. In addition, I participated in over twenty-five (25) OIS incidents with my team at IAD.

At some point, prior to September 4, 2018, I met with ADA Tracy Tripp to discuss matters relating to the Officer-Involved Shooting involving discharging Police Officer Ryan Pownall, who shot and killed a male named David JONES. ADA Tripp advised me of the facts gleaned during a Grand Jury investigation of this matter and that DAO utilized the Twenty-Ninth County Investigating Grand Jury, which issued Presentment #4 under Notice C-55. That Presentment set forth the basis of the probable cause supporting the issuance of an arrest warrant for Officer Pownall. Acting in Good Faith, based exclusively upon the materials in the Presentment as represented by ADA Tripp, I submitted an Affidavit of Probable Cause and obtained an arrest warrant for Police Officer Pownall.

From 2018 through October of 2022, there have been numerous court-related motions and rulings. The Honorable Barbara A. McDermott issued a Statement of Findings and Conclusions of Law, dated October 17, 2022. Judge McDermott ruled that the Commonwealth's case relied *exclusively* on the Presentment. Due to procedural errors, Judge McDermott ruled that Ryan Pownall's Constitutional Rights were violated and GRANTED Officer Pownall's Motion to Quash and dismissed all charges.

On October 26, 2022, Detective Brian Newell – the assigned investigator for this police shooting – and I met with ADA Brian Collins, ADA Vincent Corrigan and ADA Lyandra Retacco at the DAO. Based upon conversations with ADAs Collins, Corrigan and Retacco, the DAO requested that OISI Unit review all of the facts gathered during the investigation. In addition, OISI was directed to review evidence that was presented to the Investigating Grand Jury. The DAO further requested that OISI submit the facts of this investigation for review.

Detectives Murawski, Newell and I reviewed the facts gathered during the course of the investigation conducted by the OISI Unit and reviewed facts gathered during the Grand Jury investigation. Listed below are the facts that OISI learned during the review of this case.

On June 8, 2017, approximately 5:15PM, Philadelphia Police Officer Smith #4414 responded to 5215 Ditman Street for a report of an Abduction (Refer to DC #17-15-054262). The complainant, his father, and a sibling were located. Officer Pownall #1596, operating a RPC 1519 (SUV), responded to the assignment. Officer Pownall was subsequently tasked with transporting the complainant, her father, Terrance Freeman, and a sibling to the Special Victim's Unit (SVU) located at 300 East Hunting Park Avenue. It was during this transportation that an OIS occurred with JONES.

Terrance Freeman (Pownall's Passenger), following the OIS, was transported to OISI HDQT at 24th and Wolf Streets. Detective Derrick Jacobs conducted this interview, which started at 9:09PM and was memorialized and adopted by Mr. Freeman. Mr. Freeman stated the following:

He was seated in the rear of RPC 1519 with his two children and en route to SVU from the area of 5100 Ditman Street. While in the 4200 block of Whitaker Avenue, Freeman noticed a dirt bike that appeared to be running from a “police truck” (later revealed to be a police SUV operated by Officers Cannon and Hall). Freeman observed that the police truck was behind a dirt bike, which was being operated by JONES, but that the police were not chasing the dirt bike.

Freeman observed the dirt bike turn right onto the sidewalk and the police continued north on Whitaker Avenue (this is depicted in a surveillance video recovered from 4210 Whitaker Avenue). The dirt bike traveled west across Whitaker Avenue towards the Casa De España and entered the south driveway before circling around the rear to the north side driveway of the restaurant. Freeman, described JONES as revving the engine of the dirt bike while on the sidewalk.

At this point, Officer Pownall approached the dirt bike. Freeman stated that Officer Pownall exited the vehicle and told JONES “Don’t Move” and also stated, “I’m taking your shit!” [Page #2 Freeman 75-483]

Freeman described JONES as slowly moving backwards away from Officer Pownall (which would place him moving west into the driveway). He further states that JONES was reaching into his waistband trying to get something in his waist area. [Page #2 Freeman 75-483]

Freeman describes JONES’ actions in moving backwards with his hands going to his waistband as “suspicious”. [Page #2 Freeman 75-483]. Freeman also states JONES’ resisted Officer Pownall’s attempt to pat him down. Freeman then states, “Now they’re scuffling, because the resist turned into a scuffle because the male was trying to get something from under his hood.” [Page #2 Freeman 75-483]. Freeman reports that while this is happening, Officer Pownall tells JONES “don’t move”. Freeman described that Officer Pownall was trying to keep JONES away from “getting what he was going for” [Page #2 Freeman 75-483]. Freeman stated that he was “close enough to look the deceased in the eyes.” He describes catching JONES “eyes for about five seconds” and reports that he “look right at him” and said “Don’t do it bro”. Freeman then states that the “tussling is still going on” and that JONES is still trying to get away from Pownall. Freeman again states, “we catch eyes for a second time. I repeat again ‘don’t do it bro.’” Freeman then describes how JONES breaks “loose from the scuffle now, while reaching in his hoody”. [Page #2 Freeman 75-483] He states that Officer Pownall is grabbing him from behind and that he hears the “crackling from his taser.” (*Note: Departmental records check revealed that Pownall was not issued an Electronic Control Weapon (ECW) nor was one photographed on his duty belt after the incident*). He describes JONES as breaking free and states “next thing I know is the Officer pulls his firearm and shoots three times.” (Page #2 Freeman 75-483). Freeman jumped on his kids (while still positioned in the rear of RPC 1519) until the gunfire stopped. After the shooting, Freeman looked around and observed JONES laying approximately thirty feet from the Police vehicle. While Freeman did not observe a firearm until the incident concluded, he believed JONES possessed a firearm based on his actions in interacting with Officer Pownall [Page 2, 3 – Freeman 75-483].

Note: Freeman directed Officer Hall in the driveway. A review of the video at [5:35:23PM] Freeman is depicted hanging out of rear window of RPC 1519. In the screen capture for 5:35:45PM, Hall approached as Freeman pointed west into driveway. In his statement, Freeman estimated the firearm was approximately five to six feet from where the scuffle occurred between Officer Pownall and JONES.

Note: On November 3, 2017, Mr. Freeman met with Sr. Deputy Attorney General Christopher Phillips, Detective Jacobs and Special Agent Peffall (PA-Attorney General Office). DAG Phillips reviewed with Freeman his June 8, 2017 statement taken by Detective Jacobs line by line. "Freeman agreed that the statement was accurate and made no changes or deletions." [PA AGO-Supplemental Report #43-1311]

Domenic Delgado (911 Caller) arrived at OISI HQ at 24th and Wolf Streets on June 21, 2017 [13 days following this incident]. Delgado was interviewed by Detectives Jacobs and Sierra, which was memorialized and adopted by Delgado, who relayed the following: He was traveling south in the west side lane of Whitaker Avenue approaching Hunting Park in a red Acura TSX.

[A surveillance video recovered from 4210 Whitaker Avenue and a Sunoco located at 4200 Whitaker Avenue depicts Delgado's Acura travelling south bound in the east side lane. This would place his vehicle one lane further away from the incident scene.]

Delgado stated that he was in traffic and observed JONES sitting on a dirt bike in the driveway of 4210 Whitaker Avenue. He observed a police vehicle approach JONES, and Officer Pownall exit the police vehicle and attempt to make an arrest. Delgado described a tussle and stated that Officer Pownall put a gun to JONES' neck [Page #2 Delgado 75-483]. They continued tussling [Page # 2 Delgado 75-483] and JONES broke loose and ran. Delgado stated that "The guy looks back once" and Officer Pownall shoots JONES. Delgado observed a cell phone in JONES' right hand (video depicts a black object in JONES' left hand). Immediately after the shooting, Delgado stated, "The cops were flipping the body around looking for a gun" [Page #2 - Delgado 75-483] and also stated, "The cop was looking underneath a vehicle that was parked on the sidewalk, the BMW. The facial expression of the cop, he was just losing it. The facial expression of the cop was like, he was very shocked". [Page #2 - Delgado 75-483] Delgado called 911 but did not stay on location to speak with investigators or supervisors.

Police Officer Gittel #4228 was interviewed on June 8, 2017 and relayed that he was working with his partner Police Officer Wilson #9945 assigned to RPC 2533. He reports that they were pulling out of the McDonalds parking lot at Whitaker and Hunting Park when he heard gunshots. Officer Gittel immediately went to the location where he heard the shots and observed JONES down on the highway suffering from several gunshot wounds. Officer Gittel observed Officer Pownall on location. Officer Gittel reports that Officer Pownall told him that JONES "has a firearm on him." [Page #1 Gittel 75-483] Officer Gittel further states that he and Officer Pownall "conducted a pat down" [Page #1 Gittel 75-483] while JONES was on the ground. Officer Gittel and Wilson transported JONES to Temple Hospital. While en route Officer Gittel heard via Police Radio this was an Officer Involved Shooting.

Police Officer Wilson #9945 was interviewed and relayed that he was working with Police Officer Gittel #4228. They were assigned as RPC 2533 and were at Whitaker and Hunting Park coming out of the BP Gas Station/McDonalds lot when he heard multiple gunshots. Officer Wilson looked toward the Boulevard and observed JONES down on the highway and Officer Pownall standing next to him. When Officer Wilson and his partner pulled up to the scene, he observed JONES on the ground with blood all over him next to a silver car. Officer Pownall was stating that JONES has a gun on him. He further reports that Officer Pownall was “going through the male” [Page #1 Wilson 75-483] while relaying information to Officers Gittel and Wilson that the male “has a gun on him.” [Page #1 Wilson 75-483] Officer Wilson did not see a gun on scene. Officer Wilson and his partner transported JONES to Temple Hospital and while en route he heard that it was an Officer Involved Shooting.

Police Officer Michael Smith #4414 was interviewed on June 8, 2017 and relayed that he heard Officer Pownall broadcast over police radio “shots fired”. Officer Smith immediately responded to the area where he last saw Officer Pownall at Whitaker and Hunting Park Avenue. When Officer Smith arrived, he observed two other police vehicles on location and observed JONES laying on his back bleeding, heavily from his torso. Officer Smith also observed, “Officer Pownall with a large amount of blood on his hands, as Officer Pownall frisked JONES without any gloves on.” [Page #1 – Smith 75-483] Officer Smith questioned Officer Pownall if he was OK numerous times without a response. Responding officers transported JONES to the hospital and Officer Smith began securing the crime scene. He observed Officer Pownall’s patrol vehicle in a side parking lot, in front of the vehicle there was a dirt bike laying on its side. A few feet from the dirt bike there was a handgun laying on the ground.

Note: Surveillance Video depicts at 5:34:33PM Officer Smith #4414 arrive on location with Police Radio in hand. At 5:34:40PM - 05:34:48PM, Officer Smith approaches JONES and Officers Gittel, Pownall and Wilson with Police Radio in hand. He then backs away and removes his firearm with left hand looking towards JONES and the officers.

Police Officer Raymond Hall #2920 was interviewed on June 8, 2017 and relayed the following: Officer Hall and his partner, Officer John Cannon #3185 encountered JONES, moments prior to the shooting incident. Officer Hall observed JONES driving a dirt bike on the sidewalk at Castor and Hunting Park Avenue. They attempted to get JONES’ attention, to tell him to pull over, but JONES looked at the Officers and continued riding. The Officers then proceeded to go to their original destination to meet a fellow Officer on an unrelated incident. Soon after leaving JONES on the dirt bike, they heard Officer Pownall come over radio saying, “1519 shots fired Whitaker and Hunting Park”.

Note: A review of Police Radio transmissions on Northeast Band revealed that Officer Pownall initially stated “1519 Shots Fired”, dispatch asked Officer Pownall his location and he responds “Huntington Park and Whitaker”.

Officer Hall and his partner proceeded directly to that scene and observed JONES. The same male who they had encountered on the dirt bike was being placed by fellow Officers into a patrol vehicle. Officer Hall added that he observed and heard Freeman who was in the rear of RPC 1519, state,

"Officer, the gun is over here, the gun is over here." Officer Hall further reports that Freeman told him that "he [meaning JONES] drew on the officer." [Page #1 Hall 75-483] Officer Hall located and stood by the firearm.

Police Officer Jonathan Cannon #3185 was interviewed on June 8, 2017 and relayed that he was working with his partner, Police Officer Hall #2920 assigned as RPC 1514. They responded to an Assist Officer at 4210 Whitaker Avenue. Upon arrival, Officer Cannon observed RPC 1519 parked sideways in a driveway to a restaurant and in front of RPC 1519 was a red and white dirt bike laying on the ground leaking gas. Approximately 15 feet further west of the dirt bike, Officer Cannon observed a black handgun on the ground. In front of the restaurant he observed JONES being placed into a marked 25th District vehicle for transportation to the hospital. Officers Pownall (RPC 1519) and Smith (RPC 1525) were on location when he arrived. Approximately 30-40 seconds prior to the Assist Officer broadcast, Officer Cannon observed JONES operating a red and white dirt bike, traveling at a high rate of speed on Hunting Park Avenue in the area of H or I Street. When Officer Cannon observed JONES at Luzerne Street he couldn't tell if JONES was armed. Officers Cannon and Hall attempted to pull up next to JONES, he attempted to flee. JONES made a right onto Whitaker Avenue and Officer Cannon and his partner also made a right. JONES turned into a parking lot on Whitaker Avenue and they stayed straight on Whitaker. They did not broadcast information over Police Radio about JONES when they first observed him.

Sergeant Olivia Hoffman #8780 was interviewed on June 8, 2017 and relayed the following: Sergeant Hoffman responded to an "Assist Officer / Shots Fired" involving Officer Pownall, who is assigned to the 15th District. Sergeant Hoffman stated Officer Pownall informed her that while transporting three witnesses to the SVU, he encountered JONES, riding a dirt bike "erratically" [Page #2 – Hoffman 75-483] in the area of Whitaker Avenue & Hunting Park Avenue. Officer Pownall "made contact with JONES, stated that upon approach, JONES was unresponsive, and started acting suspicious by blading his body." [Page #2 – Hoffman 75-483] Officer Pownall then told Hoffman that he "frisked the individual and felt a firearm". [Page #2 – Hoffman 75-483] Pownall then told Hoffman that he told JONES "Don't be stupid." [Page #2 – Hoffman 75-483] He explained that he did this to tell "the individual [JONES] that he [POWNALL] knew he had a firearm." [Page #2 – Hoffman 75-483] Officer Pownall stated that he had one hand on JONES' firearm and his other hand on his own weapon as he was positioned behind JONES. Officer Pownall stated that "there was a struggle between him and the individual over the weapon when [he] shot him" [Page #2 – Hoffman 75-483]. Officer Pownall reports that he attempted to shoot JONES, but his "gun jammed and he had to rack his weapon once for his weapon to fire". [Page #2 – Hoffman 75-483] Officer Pownall further states that JONES "continued to walk on foot south on Whitaker then fell". [Page #2 – Hoffman 75-483] After the discharge, Officer Pownall informed Sergeant Hoffman that he "ran over to the individual, still believing the offender had the weapon." [Page #2 – Hoffman 75-483] Officer Pownall conducted a search of JONES for the firearm. According to Sergeant Hoffman, JONES' firearm was located approximately twenty feet from dirt bike.

NOTE: Officer Pownall informed Sergeant Hoffman that he fired one (1) time but a search of the scene revealed three (3) fired cartridge casing and one (1) live 9mm round by the dirt bike. The live round was examined by FIU and it was found to have "an off center circular indentation." [FIU Lab Report dated 6-16-17, Lab# 17FIU-2162]

Police Officer Rachael Mahoney #2464 was interviewed on June 8, 2017 and relayed that she was working with her partner, Police Officer Melissa Rivera #3638. Officer Mahoney and her partner transported civilian witness Terrance Freeman along with his two minor children. Freeman relayed to Officer Mahoney that JONES was on a dirt bike, basically “driving erratically and crazy.”” [Page 1 - Mahoney 75-483] Freeman told Officer Mahoney that another police vehicle drove by and ignored JONES. According to Freeman, the dirt bike pulled into the lot on the east side of Whitaker Avenue north of Hunting Park. Then, the dirt bike came out of the first lot that JONES drove into and rode across the street into a lot on the west side of Whitaker Avenue where the shooting took place. According to Freeman, JONES “was pulling at his waist and Officer Pownall had JONES by his waist and was tussling with” [Page 2 - Mahoney 75-483] JONES. Freeman also informed Officer Mahoney that he looked at JONES and told him “don’t do it bro, don’t do it bro,” because his window was down. He added and that Officer Pownall “had to do what he had to do.” [Page 2 - Mahoney 75-483]

VIDEO ANALYSIS

Surveillance Video recovered from CASA DE ESPAÑA (4210 WHITAKER AVENUE) along with still shots of the same video, developed by Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (MAGLOCLEN), were analyzed.

The video is time stamped 06/08/2017 05:29:07 PM

JONES comes into view on a red and white dirt bike from the north driveway of the building heading east towards Whitaker Avenue (05:32:33PM). JONES gets off the dirt bike, looks down towards the engine area of the bike and walks west back into the driveway out of camera view (05:32:47PM).

Officer Pownall comes into camera view heading in a northwest direction towards the north driveway (05:32:56). Officer Pownall’s vehicle comes to a complete stop at 05:33:04PM. Officer Pownall exits from the driver’s side and walks west into the driveway out of camera view (05:33:08PM).

JONES comes back into view and runs in a southeast direction towards Whitaker Avenue between the northeast corner of the building and RPC 1519 (05:33:27PM). What appears to be a muzzle flash is observed from Officer Pownall’s firearm while in close proximity towards JONES as he runs approximately SIX (6) STRIDES in a south direction towards the rear of the BMW parked on the sidewalk. As JONES changes direction and turns southeast along the driver’s side of the BMW, JONES turns his head towards his left shoulder, Officer Pownall fires at JONES. What appears to be a puff of smoke is visible in the video at this moment. JONES falls to the ground along the driver’s side of the BMW. After Officer Pownall fires, he holsters his firearm and appears to grab his microphone. A black object is observed falling from JONES left hand as he is falling to the ground. (A black Apple iPhone was later recovered from that location). JONES picks up the object and lays on his back (05:33:33PM). Officer Pownall approaches in the same direction while redrawing his firearm [HE IS RIGHT HAND DOMINANT] which he then points in the direction of JONES (05:33:39). Officer Pownall holsters his firearm as he is proximate to JONES and reaches for his POLICE RADIO microphone, located on his right shoulder, with his right hand, while looking in a southwardly direction and broadcasts. **Officer Pownall is kneeling on JONES’ left arm/shoulder and is holding JONES’ left arm/wrist with his left hand.**

Officer Pownall drops either a flash light or collapsible baton and reached with his left hand towards the waistband of JONES. Officer Pownall places his left knee of the right shoulder/chest area of JONES as he searches the waist area. Officer Pownall looks to his left (south) with right hand on radio mic and turns north and towards traffic with his back to the camera. Officer Pownall takes his right hand and is searching the front waist area of JONES (05:33:53PM) and now begins to stand. Officer Pownall uses both hands to pull up the clothing on JONES (shirt and hood) as RPC 2533 (Officer Gittel and Wilson) arrive in a northwest direction adjacent to the BMW and Officer Pownall's location. Officer Pownall picks up the flashlight or collapsible baton and pulls JONES onto his stomach as Officer Gittel exits from the driver's side. Officer Pownall searches the rear waist area of JONES. Officer Wilson comes into view (05:33:59PM) Officer Gittel appears to broadcast over police radio. Officer Pownall looks back towards Officer Wilson as he approaches. JONES is now lying on his right side. Officer Pownall rolls JONES onto his back and checks the front waist area again lifting up his shirt (05:34:12PM). Officer Wilson bends down along the driver's side of the BMW and appears to look under the rear of the BMW (05:34:15PM). Officer Pownall stands up and walks towards the rear of the BMW and looks under the vehicle as Officer Wilson is looking down towards JONES (05:34:24PM). Officer Gittel opens the rear driver's side door of RPC 2533. Officer Pownall's radio appears to be swinging and tries to detach it from his shirt. Officer Smith arrives on location (05:34:30PM) walking west from Whitaker Avenue towards the scene with a hand held radio in his left hand. Officer Pownall walks to the passenger side of the BMW as both Officers Gittel and Wilson approach JONES. Officer Pownall walks back towards JONES as Officers Gittel and Wilson bend down to pick up JONES. Officer Smith places his radio into his right hand and removes his firearm looking down toward JONES and the officers (05:34:40PM). Officer Pownall's radio is observed hanging on the ground as Officer Smith appears to be talking into his police radio with his firearm still out. Officer Smith holsters his weapon (05:34:40PM). Officer Pownall gets his radio detached, and crawls towards JONES and the BMW and appears to look under the vehicle. Officers Gittel and Wilson appear to be searching JONES. Officer Pownall pulls JONES onto his stomach as all three officers search him (05:34:58PM). The officers roll JONES back onto his back as the officers check the front of him (05:35:03PM). Officer Pownall stands up and walks northwest towards the back of the BMW looking down towards the ground and along the passenger side of the vehicle (05:35:08PM). Officers Gittel and Wilson attempt to pick up JONES. Officer Pownall helped the officers place JONES into RPC 2533 (05:35:32PM).

Approximately 24 seconds pass from the time Officer Pownall exits his patrol vehicle until JONES falls to the ground. [The entire encounter between Officer Pownall and JONES including Officer Pownall's firing his service weapon takes 24 Seconds].

RPC 2533 car arrives on location 28 seconds after the last shot by Officer Pownall.

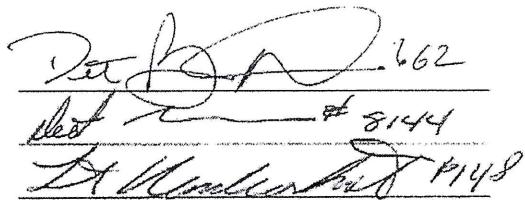
From the time that Officer Pownall touches JONES after the final shot until he is placed in the rear of RPC 2533 there is a continual search of JONES and the immediate area surrounding him and the parked BMW including the undercarriage of the vehicle. (Approximately 2 minutes)

During Delgado's interview he stated; after the shooting, "The cops were flipping the body around looking for a gun" [Page 2 – Delgado 75-483] and also stated, "The cop was looking underneath a vehicle that was parked on the sidewalk, the BMW. The facial expression of the cop, he was just losing it. The facial expression of the cop was like, he was very shocked" [Page 2 – Delgado 75-483]

Based on a review of video evidence and Police Radio transmissions, the firearm was located approximately 2 minutes and 45 seconds after Officer Pownall fires the last shot.

I am likewise aware that the District Attorney's Office contracted with Gregory A. Warren, Ed.D. (American Law Enforcement Training and Consulting, LLC) who reviewed the facts of this case and rendered his expert opinion that Officer Pownall's use of deadly force was justified under Pennsylvania Law.

A thorough review of all evidence collected during the Officer Involved Shooting Investigation, interviews of witnesses, and analysis of video, leads us to believe that the aforementioned facts do not rise to the level of probable cause to recommend criminal charges against former Police Officer Ryan Pownall.


D.A. Muller
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